

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHER DIVISION AT JACKSON

KENARA VONZELL MCDAVID

PLAINTIFF

vs.

CASE NO: 3:18-cv-00211-TSL-LKA

CITY OF FLOWOOD,
ANDREW LOHRISCH,
FNU HENDERSON,
THE KROGER CO.,
KRGF, INC.,
KROGER SPECIALTY PHARMACY, INC., d/b/a
KROGER SPECIALTY
PHARMACY MS,
MS DEPT. OF PUBLIC SAFETY,
And DOES 1-100

DEFENDANTS

**SPECIAL APPEARANCE, DENIAL OF ALL ALLEGATIONS,
AND MOTION TO DISMISS BY ANDREW LOHRISCH**

COMES NOW Defendant, Andrew Lohrisch, making a special appearance by and through undersigned legal counsel for the sole purpose of contesting improper service of process and denying liability and to declare that all of the allegations and contentions which have been made against him are ill-conceived, utterly frivolous, defamatory, untrue, and unfounded. Mr. Lohrisch was not present at the pharmacy when the alleged events took place, and he never, ever, spoke to the plaintiff. Mr. Lohrisch should be dismissed from this frivolous lawsuit and respectfully demands all costs, expenses, and legal fees to be taxed to and charged against the Plaintiff. Mr. Lohrisch specifically reserves all of his counter-claims and rights of any nature against the plaintiff and any others.

Lohrisch was served with improper, unauthorized, ineffectual Summons for the Second Amended Complaint [DOC #45] on or about July 3, 2018. Service of process was improper and defective because the Second Amended Complaint had been filed and served without proper

authority and leave of Court. The lawsuit should be dismissed as it pertains to and against Lohrisch, Defendant.

Out of an abundance of procedural caution, in light of refusal by legal counsel for Plaintiff to agree to voluntarily dismiss him or grant an extension of time for Lohrisch to serve a responsive pleading, Defendant Lohrisch does hereby deny all allegations of liability and fault and states as follows:

That the Complaint does not state a cause of action against this Defendant sufficient under law for any type of recovery and therefore all claims should be denied and the Complaint should be dismissed with prejudice. Fed. R. Civ. P. 12.

Addressing the allegations of the Second Amended Complaint, and without waiving any defenses or claims, this Defendant states:

The PRELUDE includes merely includes an irrelevant quote which requires no response and is therefore denied. This Defendant expressly denies any fault or liability.

1. - 25. As to this Defendant, the allegations are irrelevant, require no response, and are denied.

26. Denied.

27. - 47. As to this Defendant, the allegations are irrelevant, require no response, and are denied.

48. Denied.

49. As to this Defendant, the allegations are irrelevant, require no response, and are denied.

50. - 51. Denied.

52. - 58 As to this Defendant, the allegations are irrelevant, require no response, and are denied.

59. - 60. Denied.

61. - 65. As to this Defendant, the allegations are irrelevant, require no response, and are denied.

66. - 68. Denied.

69. - 250. As to this Defendant, the allegations are irrelevant, require no response, and are denied.

The JURY DEMAND requires no response. This Defendant expressly denies any fault or liability.

PRAYER FOR RELIEF

The unnumbered paragraph which begins with the word “**WHEREFORE,**” and the other unnumbered paragraphs, are denied. This Defendant expressly denies any fault or liability.

As a matter of fact, the Plaintiff has no claim against this Defendant.

As a matter of law, the Plaintiff has no claim against this Defendant.

The Plaintiff’s claim should be dismissed, and the Defendant should be reimbursed for attorneys’ fees and all other expenses and costs of this action because the Plaintiff’s claims are without substantial justification, they are frivolous, groundless in fact and law, meritless, unnecessary, and vexatious. Miss. Code. Ann § 11-55-1, *et. seq. and the Federal Rules of Civil Procedure, and uniform local rules.*

RESPECTFULLY SUBMITTED, this the 23rd day of July, 2018.

FOR: Defendant, Andrew Lohrisch

BY: /s/Monte L. Barton Jr.
MONTE L. BARTON JR.

OF COUNSEL:
MONTE L. BARTON, JR. (MSB# 2095)

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CERTIFICATE OF SERVICE

I, the undersigned, attorney of record for Andrew Lohrisch, do hereby certify that I have this day served copies of the foregoing via ECF to the following counsel of record:

Dow Yoder, Esq.
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COUNSEL FOR CITY OF FLOWOOD,

THIS, the 23rd day of July, 2018.

/s/Monte L. Barton Jr.
Monte L. Barton Jr.